

---

**TITLE 465 DEPARTMENT OF CHILD SERVICES**

**Administrative Rules Oversight Committee Notice  
60 Day Requirement ([IC 4-22-2-19](#))  
LSA Document #10-463**

March 1, 2011

Senator R. Michael Young, Chair  
Administrative Rules Oversight Committee  
c/o Legislative Services Agency  
200 West Washington Street, Suite 301  
Indianapolis, Indiana 46204-2789  
Attn: Sarah Burkman

Re: LSA Document #10-463 – Proposed Rule Regarding Rate Setting for Department Managed Foster Homes

Dear Senator Young:

On behalf of the Indiana Department of Child Services (DCS), I am submitting this notice to the Administrative Rules Oversight Committee in compliance with [IC 4-22-2-19](#), which requires an agency to begin the rulemaking process not later than sixty (60) days after the effective date of the statute that authorizes the rule, with certain exceptions not applicable to this notice.

This Proposed Rule establishes a procedure for setting per diem rates and other payments to foster homes licensed by DCS under [IC 31-27-4](#), or under a comparable law in another state where the home is located, on behalf of children for whom DCS is responsible for foster care under a juvenile court case, and who are placed directly in the home by a DCS local office without involvement of a licensed child placing agency.

There is no statute that specifically requires or authorizes DCS to adopt an administrative rule concerning per diem and other payments to licensed foster homes. Indiana Code 31-25-2-7(a)(8) provides that DCS is responsible for "administering foster care services". Rules necessary to carry out the department's statutory duties under [IC 31-25](#) are authorized by [IC 31-25-2-18](#). Those statutory provisions were added to Title 31 by P.L.145-2006, effective July 1, 2006.

Before establishment of DCS in 2005 the per diem rates and other payments for children placed in foster homes were established by the county offices of the former FSSA Division of Family and Children. Inconsistencies among counties in their approaches to rate setting resulted in a wide variation in rates across the state for the same or similar foster care placements. In 2006 the DCS Director instituted a uniform statewide rate for foster care of children not requiring therapeutic or special needs foster care placements, and who were placed in licensed homes managed by DCS county offices. The per diem rate of \$25, currently in effect, was based on a study of the county-based rates in effect in 2005, rather than the cost of care based on the elements specified in Title IV-E of the Social Security Act, which provides the major portion of funding for foster care maintenance costs for children that meet the federal eligibility requirements (approximately 45% of all children for whom DCS is responsible for foster care under court supervision).

In 2009, following a study of the current payment rate in comparison to payments for similar foster care placements in other states in the Midwest, and in light of the need to meet budgetary limitations, DCS gave notice that current foster rates would be reduced by 10 percent effective January 1, 2010. A lawsuit was filed in U.S. District Court on behalf of a class of foster children and foster parents, asserting that the proposed new rate did not comply with the foster care maintenance payment requirements of Title IV-E. In issuing a preliminary injunction in January 2010 that has temporarily halted any change in the current foster care per diem rate, the court stated that DCS should adopt a rule to establish a methodology for determining the appropriate amount of foster care per diem payments based on the Title IV-E cost components. Thereafter, DCS and the class agreed to a settlement of the lawsuit, under which DCS would adopt and implement a methodology to determine an appropriate foster care maintenance payment based on the items specified in Title IV-E. DCS is complying with that settlement agreement through this Proposed Rule.

The Notice of Intent to Adopt this [a] Rule was posted to the Indiana Register on July 14, 2010. The Proposed Rule was posted on August 25, 2010. DCS held a public hearing on the Proposed Rule on September

24, 2010, at which many interested persons appeared and submitted written and oral statements. A subsequent public hearing was held on November 15, 2010. No additional statements regarding the contents of the Proposed Rule were submitted at the second hearing. DCS has considered and prepared written responses to the comments or statements it received at or following the public hearings and has made several amendments to the Proposed Rule that will be incorporated in the Final Rule.

This rule is related to a separate Proposed Rule, LSA *[Document]* #10-417, that provides for per diem and other payments for children placed in foster homes through licensed child placing agencies, and additional administrative payments to the supervising agencies for services provided to those homes and children. Hearings on that rule were held on the same dates as the hearings on this rule. Settlement negotiations ensued concerning the contents of LSA *[Document]* #10-417 with the Indiana Association of Residential Child Caring Agencies (IARCCA), which have resulted in an agreement to the provisions of LSA *[Document]* #10-417, and settlement of the separate lawsuit brought by IARCCA concerning rates and payments made by DCS for foster care of children placed through child placing agencies or in residential treatment facilities. Adoption of this rule has been delayed to await the determination of related provisions in the rule concerning foster homes licensed and managed through child placing agencies.

DCS is now ready to proceed with adoption of this rule as a Final Rule, together with the related rule concerning foster homes operated by child placing agencies, subject to final approval by the Attorney General and Governor as provided under [IC 4-22-2](#). Payment rates and amounts established under this rule will be effective no earlier than January 1, 2012.

If you need additional information concerning this subject, please do not hesitate to contact me at (317) 233-6547 or by e-mail as shown below.

Sincerely,

John Wood  
Deputy General Counsel  
Department of Child Services  
[ljohn.wood@dcs.in.gov](mailto:ljohn.wood@dcs.in.gov)

cc: Indiana Register  
James W. Payne, Director, DCS  
Jeffrey M. Lozer, General Counsel, DCS

*Posted: 03/09/2011 by Legislative Services Agency*  
An [html](#) version of this document.